

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 516

Introduced by Assembly Member Brown

February 20, 2013

An act relating to ~~energy~~; *regulation of energy and wildlife resources*.

LEGISLATIVE COUNSEL'S DIGEST

AB 516, as amended, Brown. ~~Renewable energy~~; *Electrical transmission infrastructure: taking of ~~birds~~; birds, nests, and eggs: permits.*

Existing law establishes the Department of Fish and Wildlife and requires the department to enforce and administer the fish and game laws pursuant to the policies formulated by the Fish and Game Commission. Existing law makes it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as provided. Existing law makes it is unlawful to take, possess, or destroy any birds-of-prey or to take, possess, or destroy the nest or eggs of these birds, except as provided. For these purposes, under existing law "take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

This bill would authorize the department to issue a permit to an applicant to take the nests or eggs of any bird and to take any birds-of-prey if the take is incidental to the construction of an electrical transmission infrastructure project, as defined, and if the applicant satisfies other specified conditions. This bill would require an application for a permit to be submitted to each regional manager for the region or regions in which the electrical transmission infrastructure project will be located and to contain specified information. This bill

would provide that these permits shall be subject to the Permit Streamlining Act. This bill would provide that these provisions shall remain in effect until January 1, 2015, or until the date of final adoption of regulations by the Fish and Game Commission authorizing a permitting program for take of birds, eggs, and nests protected by the provisions described above, whichever is sooner.

Under existing law, the department is authorized to issue permits to take specified birds and animals. A violation of a permit issued by the department is a crime.

Because this bill would authorize the department to issue a permit to take birds-of-prey and the nests and eggs of any bird, the violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. Existing law establishes various requirements and programs to promote the use of renewable energy. Existing law establishes the Department of Fish and Wildlife and requires the department to enforce and administer the fish and game laws pursuant to the policies formulated by the Fish and Game Commission. Existing fish and game laws make it unlawful to take any bird, except as provided.~~

~~This bill would state the intent of the Legislature to enact legislation that would establish a mechanism for permitting the taking of birds, eggs, and nests, subject to reasonable avoidance, minimization, and mitigation measures to facilitate the construction of electrical transmission infrastructure to help achieve the state's renewable energy goals.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) It is in the interest of the state to maintain the reliability of*
4 *the electric system and to facilitate the permitting of electrical*
5 *transmission infrastructure projects to serve eligible renewable*
6 *energy resources under the California Renewables Portfolio*
7 *Standard Program (Article 16 (commencing with Section 399.11)*
8 *of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).*

9 *(b) Sections 3503 and 3503.5 of the Fish and Game Code*
10 *prohibit the take, possession, or needless destruction of eggs or*
11 *nests of any bird and prohibit the take, possession, or destruction*
12 *of any birds in the orders Falconiformes or Strigiformes or the*
13 *take, possession, or destruction of the eggs or nests of these birds.*

14 *(c) Sections 3503 and 3503.5 of the Fish and Game Code do*
15 *not authorize the Department of Fish and Wildlife to permit the*
16 *take of birds, eggs, or nests described in these sections.*

17 *(d) To facilitate the construction of electrical transmission*
18 *infrastructure projects to help achieve the state's renewable energy*
19 *goals, it is in the interest of the state to establish a mechanism for*
20 *permitting the take of birds, eggs, and nests subject to reasonable*
21 *avoidance, minimization, and mitigation measures.*

22 *SEC. 2. For purposes of this act, "electrical transmission*
23 *infrastructure project" means any project required to interconnect*
24 *renewable generation to the grid, or required for system reliability,*
25 *as approved by the California Independent System Operator*
26 *through its annual transmission planning process.*

27 *SEC. 3. Notwithstanding Sections 3503 and 3503.5 of the Fish*
28 *and Game Code, the Department of Fish and Wildlife may issue*
29 *a permit to take the nests and eggs of any birds and to take birds*
30 *in the orders Falconiformes or Strigiformes (birds-of-prey) if all*
31 *of the following conditions are met:*

32 *(a) The take is incidental to the construction of an electrical*
33 *transmission infrastructure project.*

34 *(b) The applicant takes all reasonable steps to avoid take*
35 *consistent with project construction, as described in Section 4 of*
36 *this act.*

37 *(c) The impacts of the authorized take are minimized and fully*
38 *mitigated. The measures required to meet this obligation shall be*

1 roughly proportional in extent to the impact of the authorized take
2 of the species. Where various measures are available to meet this
3 obligation, the measures required shall maintain the applicant's
4 objectives to the greatest extent possible. The required measures
5 shall be capable of successful implementation. For purposes of
6 this act, the impacts of taking shall include all impacts on the
7 species that result from any act that would cause the proposed
8 taking.

9 (d) The applicant shall ensure adequate funding to implement
10 the measures required by subdivision (c) and for monitoring
11 compliance with, and effectiveness of, those measures.

12 (e) The issuance of the permit shall not jeopardize the continued
13 existence of the species. The department shall make this
14 determination based on the best scientific and other information
15 that is reasonably available, and shall include consideration of
16 the species' capability to survive and reproduce, and any adverse
17 impacts of the taking on those abilities in light of the known
18 population trends of the species, the known threats to the species,
19 and the reasonably foreseeable impacts on the species from other
20 projects and activities.

21 SEC. 4. An application for a permit under this act shall be
22 submitted to each regional manager for the region or regions in
23 which the electrical transmission infrastructure project will be
24 located and shall include all of the following:

25 (a) A complete description of the electrical transmission
26 infrastructure project for which the permit is sought.

27 (b) The location where the electrical transmission infrastructure
28 project is to be constructed.

29 (c) An analysis of the anticipated extent of the take of birds,
30 eggs, and nests to be covered by the permit that will result from
31 the electrical transmission infrastructure project including the
32 common and scientific names of the birds and their protected
33 status, if any, under state and federal law.

34 (d) An analysis of whether the issuance of the permit would
35 jeopardize the continued existence of a species.

36 (e) Proposed measures to avoid, minimize, and mitigate the
37 impacts of the proposed taking.

38 (f) A proposed plan to monitor compliance with the avoidance,
39 minimization, and mitigation measures and the effectiveness of
40 such measures.

1 (g) A description of the funding source and the level of funding
2 available for implementation of avoidance, minimization, and
3 mitigation measures.

4 (h) Any other information the Department of Fish and Wildlife
5 reasonably determines is necessary.

6 SEC. 5. Permits issued pursuant to this act shall be subject to
7 the Permit Streamlining Act (Chapter 4.5 (commencing with
8 Section 65920) of Division 1 of Title 7 of the Government Code).

9 SEC. 6. This act shall remain in effect only until January 1,
10 2015, or until the date of final adoption of regulations by the Fish
11 and Game Commission authorizing a permitting program for the
12 take of birds, eggs, and nests protected by Sections 3503 and
13 3503.5, whichever is sooner, and as of that date is repealed.

14 SEC. 7. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 ~~SECTION 1. It is the intent of the Legislature to enact~~
24 ~~legislation that would establish a mechanism for permitting the~~
25 ~~taking of birds, eggs, and nests, subject to reasonable avoidance,~~
26 ~~minimization, and mitigation measures to facilitate the construction~~
27 ~~of electrical transmission infrastructure to help achieve the state's~~
28 ~~renewable energy goals.~~